

REMARKS

Claims 1-14 and 25-34 are pending in the application. Amendment of the pending claims should in no way be construed as an acquiescence, narrowing, or surrender of any subject matter. Support for the amendments may be found throughout the specification, as described in more detail below. No new matter has been added by the present amendments. The amendments are being made not only to point out with particularity and to claim the present invention, but also to expedite prosecution of the present application. Applicants reserve the option to prosecute the pending claims further, or other ones, in the instant or a subsequent patent application.

CLAIM REJECTIONS

Rejection of claims under 35 U.S.C. § 102(e) over Rothschild, et al.

The Examiner has maintained the anticipation rejection of claims 1-3, 5-10, and 12-14 over Rothschild et al. (U.S. Patent No. 6,589,736). Applicants have previously distinguished Rothschild from the instantly claimed invention as teaching a photocleavable group as part of the construct. Applicants have amended claim 1 and claim 8 to recite the limitation “non-photoreactive.” The claims as so limited are drawn to nonphotocleavable or nonphotoreactive embodiments of the invention. Support for such amendment may be found in the specification, for example, on the last line of page 27. Therefore, the instant claimed invention is not anticipated by the Rothschild reference. Applicants respectfully request reconsideration and withdrawal of the present rejection.

Rejection of claims under 35 U.S.C. § 102(e) over Papahadjopoulos, et al.

The Examiner has maintained the anticipation rejection of claims 1-3, 5, and 8-10 over Papahadjopoulos et al. (U.S. Patent No. 6,410,049). Papahadjopoulos et al. teaches that the targeting moiety is linked to a liposome or lipid:nucleic acid complex. Applicants have amended claim 1 and claim 8 to recite the limitation “wherein said construct is not encapsulated in a liposome or linked to a lipid.” The claims as so limited are drawn to embodiments of the invention wherein no liposome or lipid is present. Support for such amendment may be found in the specification, for example, on pages 2-3, page 9, and page 33. Therefore, the instant claimed invention is not anticipated by the Papahadjopoulos reference. Applicants respectfully request reconsideration and withdrawal of the present rejection.

Rejection of claims under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 5-7, 12-14, 27, and 32 as being indefinite. Specifically, the Examiner points out that claims 5-7 and 12-14 are allegedly indefinite because the metes and bounds of the phrase “any configuration that maintains the desired activity of said label and said moiety” cannot be determined. The Examiner has suggested that a clarifying amendment would be to insert “each” before “coupled.” Applicants have amended the claims accordingly.

Further, the Examiner has rejected claims 27 and 32 because the term “phopshorothioate” is indefinite. Applicants apologize for this minor typographical error and have amended the claims to remedy this.

Applicants respectfully urge the Examiner to reconsider and withdraw the rejections under 35 U.S.C. § 112, 2nd paragraph.

Rejection of claims under 35 U.S.C. § 102(b) over Baird, et al.

The Examiner has rejected claims 1-5, and 8-11 as being anticipated by Baird, et al. (U.S. Patent No. 6,037,329). Baird, et al. teaches that the targeting moiety is a receptor-binding internalized ligand. Applicants have amended claim 1 and claim 8 to recite the limitation “and wherein said construct does not comprise a receptor-binding internalized ligand.” The claims as so limited are drawn to embodiments of the invention wherein no receptor-binding internalized ligand is present. Support for such amendment may be found in the specification, for example, on page 11 and on page 37. Therefore, the instant claimed invention is not anticipated by the Baird reference. Applicants respectfully request reconsideration and withdrawal of the present rejection.

CONCLUSION

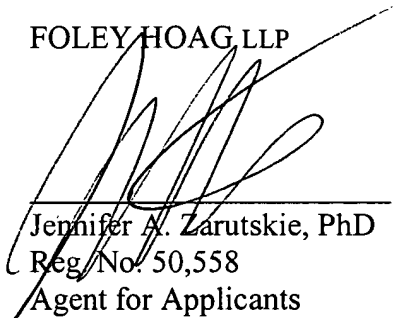
For the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the pending rejections. Applicants believe that the claims now pending are in condition for allowance, and notification of such is respectfully requested.

No fee is believed to be due in connection with the filing of this Amendment and Response. The Commissioner is hereby authorized to credit any overpayment or charge any deficiencies to Deposit Account Number **06-1448, Reference FLA- 003.01**.

If, for any reason, a telephonic conference with the Applicants would be helpful in expediting prosecution of the instant application, the Examiner is invited to call Applicants' Agent at the telephone number provided below.

Respectfully submitted,

FOLEY HOAG LLP



Jennifer A. Zarutskie, PhD

Reg/No: 50,558

Agent for Applicants

July 7, 2004

Patent Group
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210

Telephone: (617) 832-1000
Facsimile: (617) 832-7000